

Message Text

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ACTION EUR-25

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FM USMISSION BERLIN

TO AMEMBASSY BONN

INFO SECSTATE WASHDC 3642

C O N F I D E N T I A L BERLIN 1161

REF: A) STATE 149157 B) BERLIN 1136

1. -AT ALMOST LAST MINUTE, SCENARIO FOR MANTELGESETZ TAKEOVER
OF ABORTION LAW BY BERLIN HOUSE OF REPS WAS ABORTED WHEN:

A. SENAT INDICATED IT WOULD REQUIRE PUBLICATION BY SENATOR
FOR JUSTICE OF FULL TEXT OF CONSTITUTIONAL COURT DECISION IN
ORDER TO CLARIFY FOR BERLINERS EXTENT OF LAW IN BERLIN; AND

B. FRENCH INDICATED THEY COULD ACCEPT NOTHING LESS THAN LANDES-
GESETZ, WHICH WOULD BE SPECIAL BERLIN LAW PASSED BY HOUSE
CONTAINING ALL ELEMENTS OF LAW TO EXTENT IT IN FORCE IN
BERLIN, IE., WHAT WAS PASSED IN BONN AS MODIFIED BY CONSTITU-
TIONAL COURT DECISION.

2. SENATOR FOR JUSTICE KORBER SAID LANDESGESETZ WOULD BE
IMPOSSIBLE FROM GERMAN POINT OF VIEW, BOTH BECAUSE TIME WAS
TOO SHORT AND BECAUSE IT WOULD VIOLATE GERMAN CONCEPT OF LEGAL
UNITY UNDER WHICH BERLIN HOUSE IS NOT FREE TO MODIFY TEXT OF
LAW ADOPTED IN BUNDESTAG. KORBER ALSO VETOED FURTHER COMP-
ROMISE PROPOSAL THAT APPEARED ACCEPTABLE TO MISSIONS AND
SENAT CHANCELLERY THAT WOULD HAVE INCLUDED MANTELGESETZ PRO-
VIDING THAT LAW AS ADOPTED IN BONN WOULD COME INTO FORCE ONLY
TO EXTENT THAT IT HAD ALREADY ATTAINED FORCE IN FRG, COUPLED
WITH INTERPRETIVE RESOLUTION OF HOUSE OF REPS (BESCHLUSS)

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THAT WOULD CONTAIN MAJOR ELEMENTS OF CONSTITUTIONAL COURT

DECISION. KORBER'S BELIEF WAS THAT HOUS RESOLUTION WOULD BE DIFFICULT TO ARRANGE ON SHORT NOTICE AND THAT PROCEDURE WAS TOO CLOSE TO LANDESGESETZ TO ACCORD WITH GERMAN VIEW OF HOUSE'S DEPENDENCE UPON BUNDESTAG.

3. KORBER THEN CONCLUDED THAT BEST REMAINING SOLUTION WAS ONE ADVANCED BY ALLIES AT BEGINNING OF DISCUSSION: THAT SENAT SIMPLY REMOVE ITEM FROM AGENDA OF HOUSE'S JULY 13 MEETING SO THAT NO TAKEOVER OF LEGISLATION OCCURS IN BERLIN UNTIL FRG SITUATION IS CLARIFIED (PRESUMABLY SOMETIME IN THE AUTUMN). SITUATION IS UNLIKELY TO PRODUCE ANY SUBSTANTIVE DIFFERENCES BETWEEN WAY ABORTION IS TREATED IN FRG AND IN BERLIN SINCE CONSTITUTIONAL COURT INSTRUCTED FRG NOT TO CARRY OUT ANY PROSECUTIONS UNDER OLD LAW WHILE IT DETERMINES CONSTITUTIONALITY OF REFORM LAW, AND KORBER WILL INSTRUCT HIS STAATSANWALTSCHAFT LIKewise TO TAKE ACCOUNT OF SITUATION IN FRG AND HOLD OFF PROSECUTIONS.

4. WE ARE CONSULTING WITH BRITISH AND FRENCH MISSIONS ON BRIEF CONTINGENCY PRESS LINE THAT WE WOULD EXPECT TO INCLUDE POINTS THAT ALLIES WERE INFORMED OF SENAT'S DECISION TO REMOVE ITEM FROM HOUSE AGENDA UNTIL SITUATION CLARIFIED IN FRG, AND THAT, PRESUMABLY, LEGISLATION WILL EVENTUALLY BE DEALT WITH IN ROUTINE MATTER THAT WILL ENSURE LEGAL UNITY BETWEEN FRG AND BERLIN.KLEIN

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